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PART IV.

Legislative Measures and Rules thereunder.

NOTIFICATIONS.

No. 2792—L. C., dated Bangalore, 27th November 1937.

Under Rule 8 of the Rules for the conduct of business of the Mysore Legislative Council, the accompanying Mysore Extradition Bill is published for general information with the statement of objects and reasons.

By Order,
A. SUNDARARAJA RAO,
Secretary,
Mysore Legislative Council.

The Mysore Extradition Bill.

Whereas it is expedient to amend and consolidate the law relating to the extradition and rendition of criminals, It is hereby enacted as follows :—

CHAPTER I.

PRELIMINARY.

Short title, extent and commencement.

1. (i) This Regulation may be called the Mysore Extradition Regulation, 1931.

(ii) It extends to the whole of Mysore ; and

(iii) It shall come into force from such date as the Government may, by notification in the Official Gazette, direct.

Definitions.

2. In this Regulation, unless there is anything repugnant in the subject or context—

(*a*) "extradition offence" means any such offence as is described in the schedule ;

(*b*) "offence" includes any act wheresoever committed which would, if committed in Mysore, constitute an offence ;

(*c*) "rules" include prescribed forms ;

(*d*) "fugitive criminal" means any person accused or convicted of an extradition offence committed outside Mysore who is in or is suspected of being in some part of Mysore ; and

(*e*) "prescribed" means prescribed by rules made under this Regulation.

CHAPTER II.

SURRENDER OF FUGITIVE CRIMINALS IN CASE OF INDIAN STATES.

Application of Regulation.

3. Where an arrangement has been made with any State in India with respect to the surrender to such State of any fugitive criminals, the Government may, by notification in the Official Gazette, direct that this Regulation shall apply in the case of such State.

Every such notification shall recite or embody the terms of the arrangement, and shall not remain in force for any longer period than the arrangement.

4. Where this Regulation applies in the case of any State, every fugitive criminal of that State who is in or is suspected of being in any part of Mysore, shall be liable to be apprehended and surrendered in manner provided by this Regulation, whether the offence in respect of which the surrender is sought was committed before or after the date of the notification, and whether there is or is not any concurrent jurisdiction in any Court in Mysore over that offence. Apprehension of fugitives.

5. (1) Where a requisition is made to the Government by or on behalf of the Government of any State in India in the case of which this Regulation applies for the surrender of a fugitive criminal of such State, who is or is suspected of being in Mysore, the Government may if it thinks fit issue an order to any Magistrate who would have had jurisdiction to inquire into the offence if it had been an offence committed within the local limits of his jurisdiction directing him to inquire into the case. Requisition for surrender.

(2) The Magistrate so directed shall issue a summons or warrant for the arrest of the fugitive criminal according as the case appears to be one in which a summons or warrant would ordinarily issue. Summons or warrant for arrest.

(3) When such criminal appears or is brought before the Magistrate, the Magistrate shall inquire into the case in the same manner and have the same jurisdiction and powers, as nearly as may be, as if the case were one triable by the Court of Session, and shall take such evidence as may be produced in support of the requisition and on behalf of the fugitive criminal, including any evidence to show that the offence of which such criminal is accused or alleged to have been convicted is an offence of a political character or is not an extradition offence. Inquiry by Magistrate.

(4) If the Magistrate is of opinion that a *prima facie* case is made out in support of the requisition, he may commit the fugitive criminal to prison to await the orders of the Government. Committal.

(5) If the Magistrate is of opinion that a *prima facie* case is not made out in support of the requisition, or if the case is one which is bailable under the provisions of the Code of Criminal Procedure for the time being in force, the Magistrate may release the fugitive criminal on bail. Bail.

(6) The Magistrate shall report the result of his inquiry to the Government, and shall forward, together with such report, any written statement which the fugitive Magistrate's report.

Proclamation and attachment in case of persons absconding.

(3) The provisions of the Code of Criminal Procedure for the time being in force in relation to proclamation and attachment in the case of persons absconding shall, with any necessary modifications, apply where any warrant has been received by a District Magistrate under this section as if the warrant had been issued by himself.

Release on giving security.

9. (1) Where an endorsement has been made on any such warrant that the person for whose arrest it is issued may be released on executing a bond with sufficient sureties for his attendance before a person or authority indicated in this behalf in the warrant at a specified time and place, the Magistrate to whom the warrant is addressed shall on such security being given, release such person from custody.

Magistrate to retain bond.

(2) When security is taken under this section, the Magistrate shall certify the fact to the Government and shall retain the bond.

Re-arrest in case of default.

(3) If the person bound by any such bond does not appear at the time and place specified, the Magistrate may, on being satisfied as to his default, issue a warrant directing that he be re-arrested and handed over to any person authorised by the Government to take him into custody.

Deposit in lieu of bond and forfeiture of bonds.

(4) In the case of any bond executed under this section, the Magistrate may exercise the powers conferred by the Code of Criminal Procedure for the time being in force in relation to taking a deposit in lieu of the execution of a bond and with respect to the forfeiture of bonds and the discharge of sureties.

Requisition for surrender

10. Where a requisition is made to the Government by or on behalf of any Provincial Government in British India for the surrender of any person accused of having committed in British India an offence other than an extradition offence, such requisition shall (except in so far as it relates to the taking of evidence to show that the offence is of a political character or is not an extradition offence) be dealt with so far as may be in accordance with the procedure prescribed by Section 5.

Power to Magistrates to issue warrants of arrest in certain cases.

11. (1) If it appears to any Magistrate of the first class or any Magistrate empowered by the Government in this behalf that a person within the local limits of his jurisdiction is accused or suspected of having committed an offence in British India and that such person may lawfully be surrendered or that warrant may be issued for his arrest

criminal may desire to submit for the consideration of the Government.

Reference to High Court if Government thinks necessary.

(7) If the Government is of opinion that such report or written statement raises an important question of law, it may make an order referring such question of law to the High Court and the fugitive criminal shall not be surrendered until such question has been decided.

Warrant for surrender.

(8) If, upon receipt of such report and statement or upon the decision of any such question, the Government is of opinion that the fugitive criminal ought to be surrendered, it may issue a warrant for the custody and removal of such criminal and for his delivery at a place and to a person to be named in the warrant.

Lawfulness of custody and re-taking under warrant for surrender.

(9) It shall be lawful for any person to whom a warrant is directed in pursuance of sub-section (8) to receive, hold in custody and convey the persons mentioned in the warrant, to the place named in the warrant, and if, such person escapes out of any custody to which he may be delivered in pursuance of such warrant, he may be re-taken as aperson accused of an offence against the law of Mysore may be re-taken upon an escape.

Discharge of fugitive criminal committed to prison after two months.

(10) If such a warrant as is prescribed by sub-section (8) is not issued and executed in the case of any fugitive criminal who has been committed to prison under sub-section (4), within two months after such committal, the High Court may, upon application made to it on behalf of such fugitive criminal and upon proof that reasonable notice of the intention to make such application has been given to the Government, order such criminal to be discharged, unless sufficient cause is shown to the contrary.

Power to Magistrate to issue warrant of arrest in certain cases.

6. (1) Where it appears to any Magistrate of the first class or any Magistrate specially empowered by the Government in this behalf that a person within the local limits of his jurisdiction is a fugitive criminal of a State in India in the case of which this Regulation applies, he may, if he thinks fit, issue a warrant for the arrest of such person on such information or complaint and on such evidence as would, in his opinion, justify the issue of a warrant if the offence of which he is accused or has been convicted had been committed within the local limits of his jurisdiction.

Issue of warrant to be reported forthwith.

(2) The Magistrate shall forthwith report the issue of a warrant under this section to the Government.

(3) A person arrested on a warrant issued under this section shall not be detained more than two months unless within that period the Magistrate receives an order made with reference to such person under sub-section (1) of Section 5. Person arrested not to be detained unless order received.

(4) In the case of a person arrested or detained under this section, the provisions of the Code of Criminal Procedure for the time being in force relating to bail shall apply in the same manner as if such person were accused of committing in Mysore the offence of which he is accused or has been convicted. Bail.

7. The Government may at any time stay any proceedings taken under this Chapter and direct any warrant issued under this Chapter to be cancelled and the person for whose arrest such warrant has been issued to be discharged. Power of Government to discharge any person in custody at any time.

CHAPTER III.

SURRENDER OF FUGITIVE CRIMINALS IN CASE OF BRITISH INDIA.

8. (1) Where an extradition offence has been committed or is supposed to have been committed by a person in British India and such person escapes into or is in Mysore, the Government may, on receipt of a requisition made by or on behalf of any Provincial Government in British India for the surrender of the said person direct the issue of a warrant addressed to the District Magistrate of any district in which such person is believed to be, for his arrest and delivery at a place and to a person or authority indicated in the warrant, and such Magistrate shall act in pursuance of such warrant and may give directions accordingly. Issue of warrant by Government in certain cases.

(2) A warrant issued as mentioned in sub-section (1) shall be executed in the manner provided by the law for the time being in force with reference to the execution of warrants, and the accused person, when arrested, shall be produced before the District Magistrate who shall record any statement made by him; such accused person shall then, unless released in accordance with the provisions of the Regulation, be forwarded to the place and delivered to the person or authority indicated in the warrant. Execution of such warrant.

Proclamation and attachment in case of persons absconding.

(3) The provisions of the Code of Criminal Procedure for the time being in force in relation to proclamation and attachment in the case of persons absconding shall, with any necessary modifications, apply where any warrant has been received by a District Magistrate under this section as if the warrant had been issued by himself.

Release on giving security.

9. (1) Where an endorsement has been made on any such warrant that the person for whose arrest it is issued may be released on executing a bond with sufficient sureties for his attendance before a person or authority indicated in this behalf in the warrant at a specified time and place, the Magistrate to whom the warrant is addressed shall on such security being given, release such person from custody.

Magistrate to retain bond.

(2) When security is taken under this section, the Magistrate shall certify the fact to the Government and shall retain the bond.

Re-arrest in case of default.

(3) If the person bound by any such bond does not appear at the time and place specified, the Magistrate may, on being satisfied as to his default, issue a warrant directing that he be re-arrested and handed over to any person authorised by the Government to take him into custody.

Deposit in lieu of bond and forfeiture of bonds.

(4) In the case of any bond executed under this section, the Magistrate may exercise the powers conferred by the Code of Criminal Procedure for the time being in force in relation to taking a deposit in lieu of the execution of a bond and with respect to the forfeiture of bonds and the discharge of sureties.

Requisition for surrender

10. Where a requisition is made to the Government by or on behalf of any Provincial Government in British India for the surrender of any person accused of having committed in British India an offence other than an extradition offence, such requisition shall (except in so far as it relates to the taking of evidence to show that the offence is of a political character or is not an extradition offence) be dealt with so far as may be in accordance with the procedure prescribed by Section 5.

Power to Magistrates to issue warrants of arrest in certain cases.

11. (1) If it appears to any Magistrate of the first class or any Magistrate empowered by the Government in this behalf that a person within the local limits of his jurisdiction is accused or suspected of having committed an offence in British India and that such person may lawfully be surrendered or that warrant may be issued for his arrest

under Section 8, the Magistrate may, if he thinks fit, issue a warrant for the arrest of such person on such information or complaint and on such evidence as would, in his opinion, justify the issue of a warrant if the offence had been committed within the local limits of his jurisdiction.

Issue of warrant to be reported forthwith.

(2) The Magistrate shall forthwith report to the Government through the District Magistrate the issue of a warrant under this section.

Limit of time of detention of person arrested.

(3) A person arrested on a warrant issued under this section shall not, without the special sanction of the Government, be detained more than two months, unless within such period the Magistrate receives an order made with reference to such person in accordance with the procedure prescribed by Section 10, or a warrant for the arrest of such person is issued under Section 8.

Bail.

(4) In the case of a person arrested or detained under this section, the provisions of the Code of Criminal Procedure for the time being in force relating to bail shall apply in the same manner as if such person were accused of committing in Mysore the offence with which he is charged.

Surrender of person accused of, or undergoing sentence for offence in Mysore.

12. (1) A person accused of an offence committed in Mysore, not being the offence for which his surrender is asked or undergoing sentence under any conviction in Mysore shall not be surrendered except on the condition that such person be re-surrendered to the Government on the termination of his trial for the offence for which his surrender has been asked:

Provided that no such condition shall be deemed to prevent or postpone the execution of a sentence of death walfully passed.

Suspension of sentence on surrender.

(2) On the surrender of a person undergoing sentence under a conviction in Mysore, his sentence shall be deemed to be suspended until the date of his re-surrender, when it shall revive and have effect for the portion thereof which was unexpired at the time of his surrender.

Application of Chapter to convicted persons.

13. The provisions of this Chapter with reference to accused persons shall, with any necessary modifications, apply to the case of a person who, having been convicted of an offence in British India, has escaped into or is in Mysore before his sentence has expired.

Abetment and attempt.

14. Every person who is accused or convicted of abetting or attempting to commit any offence shall be deemed, for the purposes of this Chapter, to be accused or convicted of having committed such offence, and shall be liable to be arrested and surrendered accordingly.

Lawfulness of custody and retaking under warrant issued under Chapter.

15. It shall be lawful for any person to whom a warrant is directed in pursuance of the provisions of this Chapter to receive, hold in custody and convey to the place named in the warrant the person mentioned in the warrant; and, if such person escapes out of any custody to which he may be delivered in pursuance of such warrant, he may be re-taken as a person accused of an offence against the law of Mysore, may be re-taken upon an escape.

Power of Government to stay proceedings and discharge person in custody.

16. The Government may, by order, stay any proceedings taken under Chapter, and may direct any warrant issued under this Chapter to be cancelled, and the person for whose arrest such warrant has been issued to be discharged.

Application of Chapter to offences committed before its commencement.

17. The provisions of this Chapter shall apply to an offence or to an extradition offence, as the case may be, committed before the passing of this Regulation, and to an offence in respect of which a Court of Mysore has concurrent jurisdiction.

CHAPTER IV.

MISCELLANEOUS.

Receipt in evidence of exhibits, depositions and other documents.

18. In any proceedings under this Regulation, exhibits and depositions (whether received or taken in the presence of the person against whom they are used or not) and copies thereof, and official certificates of facts and judicial documents stating facts, may, if authenticated in the prescribed manner, be received as evidence.

Evidence by commission.

19. The testimony of any witness may be obtained in relation to any criminal matter pending in any State in India in like manner as it may be obtained in any civil matter under the provisions of the Code of Civil Procedure for the time being in force with respect to commissions, and the provisions of that Code relating thereto shall be construed as if the term "suit" included criminal proceeding.

Power to make rules.

20. (1) The Government may make rules to carry out the purpose of this Regulation.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for—

(*a*) the removal of prisoners accused or in custody under this Regulation, and their control and maintenance until such time as they are handed over to the persons named in the warrant as entitled to receive them;

(*b*) the seizure and disposition of any property which is the subject of, or required for proof of, any alleged offence to which this Regulation applies;

(*c*) the pursuit and arrest in Mysore, by officers of the Government or other persons authorised in this behalf, of persons accused of offences committed elsewhere;

(*d*) the manner of authenticating documents; and

(*e*) the procedure and practice to be observed in extradition proceedings.

(3) Rules made under this section shall be published in the Official Gazette and shall thereupon have effect as if enacted by this Regulation.

Detention of persons arrested.

21. Notwithstanding anything in the Code of Criminal Procedure, 1904, any person arrested without an order from a Magistrate and without a warrant, in pursuance of the provisions of Section 54, clause *seventhly*, of the said Code, may, under the orders of a Magistrate within the local limits of whose jurisdiction such arrest was made be detained in the same manner and subject to the same restrictions as a person arrested on a warrant issued by such Magistrate under Section 11.

Repeal.

22. (1) On and from the date on which this Regulation comes into force, the Chief Commissioner's Notification No. III, dated 23rd July 1878, and Government Notification No. J. 219—Legis. 14-04-14, dated the 20th July 1907 shall be deemed to be repealed.

(2) All orders made and acts done under any of the notifications hereby repealed in respect of requisitions received before coming into force of this Regulation shall have the same force and effect as if they had been made or done under this Regulation.

Prerogative of His Highness the Maharaja to direct extradition.

23. Nothing contained in this Regulation shall affect or be deemed to have affected the prerogative of His Highness the Maharaja to direct, independently of

this Regulation, the extradition and surrender of any criminal found in Mysore.

Explanation.—In this section "criminal" includes a person accused or convicted in British India of an act which, whether or not constituting an offence if done in Mysore, constitutes an offence if done in British India.

THE SCHEDULE.

EXTRADITION OFFENCES.

(*The sections referred to are the sections of the Indian Penal Code.*)

Frauds upon creditors (Section 206).
Resistance to arrest (Section 224).
Offences relating to coin and stamps (Sections 230 to 263-A).
Culpable homicide (Sections 299 to 304).
Attempt to murder (Section 307).
Thugee (Sections 310 and 311).
Causing miscarriage and abandonment of child (Sections 312 to 317).
Causing hurt (Sections 323 to 333).
Wrongful confinement (Sections 347 and 348).
Kidnapping and slavery (Sections 360 to 373).
Rape and unnatural offences (Sections 375 to 377).
Theft, extortion, robbery, etc. (Sections 378 to 414).
Cheating (Sections 415 to 420).
Fraudulent deeds, etc. (Sections 421 to 424).
Mischief (Sections 425 to 440).
Lurking, house-trespass (Sections 443 and 444).
Forgery, using forged documents, etc. (Sections 463 to 477-A).
Desertion from the Army.
Piracy by law of nations.
Sinking or destroying a vessel at sea, or attempting or conspiring to do so.

Assault on board a ship on the high seas with intent to destroy life or to do grievous bodily harm.

Revolt or conspiracy to revolt by two or more persons on board a ship on the high seas against the authority of the master.

Any offences against the laws relating to criminal tribes or against any section of the Indian Penal Code or against any other law which may, from time to time, be specified by the Government by notification in the Official Gazette either generally for British India and all States or specially for British India or for any one or more States.

Statement of Objects and Reasons.

For the extradition and surrender of fugitive criminals, Mysore has entered into reciprocal arrangements with some States, such as Hyderabad, Cochin, Puddukotah, Travancore, Sandur, Banganpalli, etc., but the procedure for giving effect to such arrangements rests mainly on executive action and has no statutory basis.

So far as the extradition of fugitive criminals to British India is concerned, the present procedure is the one prescribed by the Chief Commissioner's Notification No. 111, dated 23rd July 1878. According to it, whenever a warrant is issued by a British Indian Magistrate for the surrender of a fugitive criminal, it has to be acted upon by the Mysore Magistrate as if it were a warrant issued by himself and the fugitive surrendered. The offence for which a warrant can be issued under this notification need not be an offence under the law in Mysore; nor again need it necessarily be what is generally known as "an extradition offence."

Under the Indian Extradition Act of 1903, extradition is allowed only in respect of some few offences specified in the Schedule to the Act. According to it, a requisition has to be made to the British Resident together with the particulars of the offence, the whereabouts of the accused and the records of the criminal enquiry held by the Mysore Magistrate making a *prima facie* case against the accused. The Resident, after satisfying himself that a *prima facie* case has been made out, issues a warrant for the arrest of the accused. The Resident also satisfies himself that the surrendered accused receives a fair trial and the punishment is not excessive or barbarous.

Though the intention when the Chief Commissioner's Notification of 1878 was issued appears to have been to limit its operation to extradition offences, in practice, all offences and even offences of a purely fiscal nature such as failure to pay taxes due on a motor vehicle, offences more or less of a civil nature such as defamation and acts which have been penalised and which could not have been contemplated as offences when the Chief Commissioner's Notification was issued, have, in course of time, been brought under it.

The general principle underlying extradition between States is that each State should surrender in response to

the demands of others, all persons charged with crimes which are recognised by the general conscience of civilised nations as grave offences.

The existing law and procedure in respect of the surrender of fugitive criminals to British India have been examined in detail in the judgment of the Full Bench of the High Court of Mysore in Criminal Revision Petition No. 192 of 1932-33. In that case, it has been held that the Chief Commissioner's Notification of 1878 has the force of law in Mysore, but that the British Indian Magistrate was not legally competent to issue a warrant for execution outside the limits of British India, and that his warrant for execution in Mysore was illegal and without jurisdiction. In the case under reference, the offence was not one classed as extraditable under the law in force in British India, but the grounds for the decision about the illegality of the British Indian Magistrate's warrant seems to be of general application. In view of this decision, it appears that doubts are liable to be raised in regard to the surrender of fugitive criminals under the Chief Commissioner's Notification even in extradition cases.

It has therefore been considered desirable and necessary to place on a statutory basis the procedure adopted for the surrender and extradition of criminals from Mysore to other States and British India. This Bill is intended to give effect to this and also to remove the anomalies and inconveniences existing in the present procedure.

The Bill is modelled on the lines of the Indian Extradition Act, XV of 1903, and deals with extradition between—

1. Mysore and British India, and
2. Mysore and other States in India.

The Bill provides mainly for extradition in respect of offences which are known as extradition offences. These are enumerated in the Schedule which follows closely the Indian Act.

Chapter II deals with the surrender of criminals in the case of the States in India. The provisions will apply only in the case of such States between which and Mysore, there are arrangements for extradition. For the application of the Regulation, the Government

will have to issue a notification in this behalf reciting the terms of the arrangement.

The main features of the procedure for extradition in such cases are :—

(*a*) a requisition has to be made by the State asking for the extradition of a fugitive ;

(*b*) Government have to direct an enquiry by a Magistrate ;

(*c*) the Magistrate has to issue process, hold an enquiry and find out whether a *prima facie* case is made out ;

(*d*) the Magistrate after enquiry has to make a report ;

(*e*) the Government may then issue a warrant for the surrender of the fugitive criminal.

Chapter III deals with surrender of criminals in the case of British India and the procedure prescribed herein follows closely the procedure under the Indian Act for extradition of fugitive criminals from British India to Mysore. In view of the existing arrangements between Mysore and British India, the enquiry by a magistrate contemplated in Part II is dispensed with in the case of extradition offences which are enumerated in the Schedule. The Government may on receipt of a requisition therefor and on being satisfied that a *prima facie* case has been committed, direct the issue of a warrant to the District Magistrate of the District concerned for the arrest of the fugitive criminal. The District Magistrate will have to arrest such person and release him on bail if so directed by the warrant, or deliver him to the person or authority indicated in the warrant.

Provision is also made for extradition to British India in respect of offences other than extradition offences. Requisitions in such cases will be dealt with in accordance with the procedure prescribed in Chapter II. After enquiry by a Magistrate, the Government may permit extradition in respect of such offences also.

Local Magistrates are empowered to arrest persons who are accused or suspected of having committed an extradition offence in British India or the State to which this Regulation applies pending the receipt of a requisition or the issue of a warrant for his arrest by the Government. Provision is made for the resurrender of persons undergoing sentence for offences in Mysore. The prerogative

right of His Highness to direct the extradition of any criminal in Mysore will not be affected and this will enable the performance of obligations under Article 15 of the Mysore Treaty.

The Bill had been introduced into the Legislative Council in June 1934 and had been referred to a Select Committee. The Report of the Select Committee was considered by the Legislative Council in December 1934 and the Bill as amended by the Select Committee was adopted by the Council. The passing of the Bill was, however, postponed to a subsequent meeting. But no further motion was made in the Legislative Council in respect of the Bill since December 1934. It has now become necessary to reintroduce it in the Council. The Bill now published is in accordance with the recommendation of the Select Committee. A slight addition to Clause 23 has also been made so as to make the provision clear.

No. 2794—L. C., dated Bangalore, 29th November 1937.

Under Rule 8 of the Rules for the conduct of business of the Mysore Legislative Council, the accompanying Bill further to amend the Code of Civil Procedure, 1911, for certain purposes is published for general information with the statement of objects and reasons.

By Order,

A. SUNDARARAJA RAO,

Secretary,

Mysore Legislative Council.

A Bill further to amend the Code of Civil Procedure, 1911, for certain purposes.

Whereas it is expedient further to amend the Code of Civil Procedure, 1911, for the purposes hereinafter appearing; It is hereby enacted as follows:—

1. This Regulation may be called the Code (Short title) of Civil Procedure Amendment Regulation, 193